

Letter  
32049

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-219010, B-219010.2 **DATE:** August 22, 1985

**MATTER OF:** Request for Decision by Administrative  
Office of the United States Courts;  
Alde Publishing

**DIGEST:**

1. Agency can reasonably determine to make multiple awards where no single vendor of legal research services can fulfill all of agency requirements.
2. Agency proposal to limit access to legal research systems based on price is not objectionable where it appears that competitors were all advised prior to submitting proposals of agency's intent.
3. Claim of prejudice, based on assertion that courtesy copies of agency request to GAO for advance decision incident to procurement, provided to incumbent contractors named in request, gave recipients competitive advantage, is without merit where, within days, copies of request were provided publicly to all vendors at offerors conference, initial proposals were not required until 3 weeks later, and advance decision request contained no information essential to offer preparation not already provided to prospective offerors.
4. Protest that agency demonstrated prejudice during question and answer session at offerors conference is untimely under GAO Bid Protest Regulations, 4 C.F.R. part 21 (1985) because not filed within 10 working days of conference at which protester was present.
5. It is not GAO practice to conduct investigations in conjunction with protests. Rather, burden is on protester to affirmatively prove its case.

6. Contention, first raised after closing date for receipt of proposals, that specifications in request for proposals for computer-assisted legal research services and facilities should have been structured to allow separate consideration of costs for hardware, software and database acquisition and access, is untimely under GAO Bid Protest Regulations, 4 C.F.R. part 21 (1985), which require that protests against alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1985).

The Acting Director of the Administrative Office of the United States Courts (AOC) has requested an advance decision regarding the propriety of determining that the minimum needs of the Judicial Branch of the Government require the award of multiple contracts under a current procurement for computer assisted legal research (CALR)<sup>1/</sup> facilities and services for the United States Courts under request for proposals (RFP) No. DCXOT-85-021. This procurement is the subject of a related protest by Alde Publishing which we also consider. The protest is denied in part and dismissed in part.

#### Request for Advance Decision

The request for advance decision states that the AOC currently has contracts for CALR services with three vendors: West Publishing Company (WESTLAW), Mead Data Central (LEXIS), and Lawyers Cooperative Publishing Company (AUTOCITE). The LEXIS and WESTLAW systems provide research on broad-based full text legal databases, available on a dial-up basis, with some differences between them with regard to content and search methods. The AUTOCITE service provides a database for verification of legal citations. WESTLAW is currently available to the courts at 50 sites; LEXIS service, added under a contract awarded in October 1983, is limited to the 12 basic United States Courts of Appeals. The AOC states that these contracts contain renewal options through 1987.

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<sup>1/</sup> CALR is the use of a computer to search, as an example, a database of judicial opinions to find those containing specific terms, such as "contracts, multiple awards, CALR" to find cases relevant to this question.

In October 1983, the Conference of Chief Judges of the United States Courts of Appeals charged its CALR committee<sup>2/</sup> with the task of reviewing the CALR facilities of the Judicial Branch and advising the AOC of the Judiciary's requirements. On April 1, 1985, after 6 months of using both LEXIS and WESTLAW in the Courts of Appeals, the Committee determined that "each system offers important, often essential, legal research resources which the other lacks. Each system also provides important and powerful legal information access techniques not available on the other." The committee concluded that all Federal courts would benefit from access to both systems and that federal court libraries need access to multiple CALR systems to provide the capability to obtain necessary information.

The AOC issued the RFP on May 15, 1985. The RFP requires full-text system(s) with support services for a nationwide network of a minimum of 50 new locations with expansion capabilities to 1000 or more locations. The RFP specifically reserves to the AOC the right to make multiple awards and advises that cost is a critical evaluation factor. The AOC's request for advance decision states that, if there are multiple awards and there are significant price differences between or among the competing vendors, the AOC will control costs administratively by imposing hourly usage limitations which heavily favor the low-price vendor. Although this latter information is not in the RFP, copies of this request were provided to all vendors at a pre-proposal conference on June 3, 1984, and we presume, therefore, that vendors were aware of this before submitting their offers. No vendor has objected to the fact that this information is not contained in the RFP.

Our review of an agency's determination of its minimum needs and the means of accommodating them--i.e., whether by single or multiple awards, is limited to ascertaining whether the determination has a reasonable basis. See, e.g., Office Products International, Inc., B-209610, April 5, 1983, 83-1 CPD ¶ 363. The CALR committee's report focuses only on a limited number of resources and features

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<sup>2/</sup> The committee is chaired by United States Circuit Judge Alfred T. Goodwin; membership includes both district and circuit judges and administrative and library personnel.

that U.S. Courts CALR librarians have identified as useful, needed or particularly helpful. Even within this limited grouping, however, the report identifies several databases, features or search methods unique to each of the two systems that the committee studied which addresses a particular research requirement of the courts; although there is substantial duplication between these services, neither system provided all of the needed capabilities. In these circumstances, and absent evidence that any of the competitors in the current procurement can, in fact, satisfy all of the judiciary's research requirements, we believe the AOC can reasonably determine that the minimum needs of the courts can only be met through multiple awards.

The acting director has also requested our opinion regarding the propriety of using price as a basis for controlling access to the systems in the event of multiple awards. Since it appears that all of the competitors were on notice of this prior to submitting their offers and no vendor has objected to its exclusion from the RFP, we find nothing objectionable in this proposal. We recommend, however, that language implementing this proposal be included in any contract(s) awarded under this RFP.

Alde Publishing (Alde) Protest under Solicitation  
No. DCXOT-85-021.

Courtesy copies of the AOC's advance decision request were furnished directly to the incumbents. Copies were furnished to other vendors, including Alde, at an offerors conference on June 3, 1985. The closing date for submission of proposals was June 24, 1985.

Alde contends that the disparity in time between when Alde got the letter and when the incumbents received their copies placed Alde at a competitive disadvantage. Alde asserts that this action, coupled with others in the June 3 offerors conference, demonstrates an improper preference for the incumbents. Alde also asserts that it was denied equal access to information regarding this procurement and asks that we obtain and distribute copies of all information which may have been provided only to the incumbents. The protester also asks that we investigate the relationship between the incumbents and the agency. Alde's protest was received in our office on June 20, 1985.

We perceive no favoritism in the AOC providing courtesy copies of this letter to its incumbent contractors named in the request, particularly when, within days, the same

letter is made publicly available to all vendors at the offerors conference. This is particularly true given the fact that initial proposals were not required until 3 weeks after Alde received its copy of the advance decision request. In any event, we agree with the AOC that the advance decision contained no information essential to offer preparation, other than that previously included in the Commerce Business Daily or the RFP. In sum, we find no merit in Alde's claims of prejudice.

Moreover, it is not our practice to conduct investigations in conjunction with bid protests. Rather, the protester has the burden of affirmatively proving its case. San Diego Aircraft Engineering, Inc., B-217208, Mar. 25, 1985, 85-1 CPD ¶ 347.

Alde also contends that the AOC demonstrated prejudice in favor of the incumbents during the question and answer session at the conference. In this regard, it appears that the AOC was asked why the request for an advance decision was sent only to the incumbents and whether this may have been an effort to limit the competition. The agency answer was: "Through our years of experience, these are the only companies who can provide the services and who can meet the needs of the Judiciary. We did not intend to limit the field."

As we noted above, Alde's protest was not filed with our office until June 20, 1985, and Alde was present at the offerors conference on June 3, when this remark was made.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1985), require that protests, with certain exceptions not relevant here, be filed with our office within 10 working days of when the protester knew of the basis for its protest. 4 C.F.R. § 21.2(a)(2). Alde did not file this protest within the required time.

Finally, in its comments dated July 22, 1985, in response to the AOC's report in answer to Alde's protest, Alde asserts that the specifications in the RFP should have been structured to allow separate consideration of costs for hardware, software, and database acquisition and access. Our Bid Protest Regulations, supra, require that protests against alleged improprieties apparent in a solicitation prior to the closing date for receipt of

proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1). Since Alde did not raise this contention until after the closing date for this solicitation, this question is untimely and not for consideration.

The protest is denied in part and dismissed in part.

*Milton J. Fowler*

Acting Comptroller General  
of the United States